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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* VIRINDER M. BATRA, VALERIE M. BENNETT,  
ANDREW N. CAPELLA, XIAOYAN CHEN, XIAO CHENG DING,  
PETER R. GAMBLE, and STEVEN M. MILLER

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Appeal 2009-006395  
Application 10/077,012  
Technology Center 2400

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Before JOSEPH L. DIXON, JOHN A. JEFFERY, and THU A. DANG,  
*Administrative Patent Judges.*

JEFFERY, *Administrative Patent Judge.*

DECISION ON REQUEST FOR REHEARING<sup>1</sup>

Appellants, pursuant to 37 C.F.R. § 41.52, have submitted a timely Request for Rehearing dated October 25, 2010 (hereafter the “Request”),

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<sup>1</sup> The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

requesting rehearing of our original decision dated August 23, 2010 affirming the Examiner's decision to reject claims 1-6. Opinion 10.

We have reconsidered our opinion of August 23, 2010 in light of Appellants' comments in the Request. We grant the Request and supplant the Opinion with our newly-presented ground of rejection for claims 1-3, 5, and 6 under § 103. Based on the specific circumstances in this case, the rejection of claims 1-3, 5, and 6 is designated as a new ground to ensure that Appellants have the opportunity to respond to the rejection's thrust. *See In re Kumar*, 418 F.3d 1361, 1368 (Fed. Cir. 2005) (internal citations omitted). We also reverse the obviousness rejection of claim 4.

*New Ground of Rejection Under 37 C.F.R. § 41.50(b)*

Pursuant to 37 C.F.R. § 41.50(b), claims 1-3, 5, and 6 are rejected under 35 U.S.C. § 103 over Requena and Lee.

## ANALYSIS

### *Claim 1*

We begin by construing the phrase, "location-based services provided by a plurality of disparate location-based service providers, different ones of said plurality of disparate location-based service providers specifying different formats for receiving requests" in the preamble. We find this limitation is not limiting because it merely states the invention's purpose or intended use. *See Catalina Marketing Int'l, Inc., v. Coolsavings.com Inc.*, 289 F.3d 801, 808 (Fed. Cir. 2002). That is, the recitation to "a particular location-based service provider" in the claim's body is structurally complete without the preamble's recitation to the "disparate location-based server

providers specifying different formats.” *See Am. Medical Systems, Inc. v. Biolitec Inc.*, 618 F.3d 1354, 1358-59 (Fed. Cir. 2010). Since this preambular limitation is an intended use limitation, Requena and Lee need only teach or suggest a process that possesses the ability to request services provided by location-based service providers specifying different formats. *See In re Schreiber*, 128 F.3d 1473, 1478 (Fed. Cir. 1997). Notably, the location-based service provider recited in the body of claim 1 therefore does not have to be one of the providers specifying different formats recited in the preamble. With this claim construction in mind, we turn to Requena.

Requena discloses a method for processing requests (e.g., message can be a request or response (Requena, ¶ 0075)) from service applications for services. For example, Requena discusses a user’s mobile terminal obtaining a specific service when the response is received (*see* Requena, ¶¶ 0209,<sup>2</sup> 0215) and thus must have an application for the service to implement service on the user’s mobile terminal. Requena further discloses that the service is based upon the mobile terminal’s physical situation or actual location (Requena, ¶ 0209) and thus is a location-based service application for a location-based service as recited. *See also* Requena, ¶ 0016. Additionally, Requena discloses these requests for services are provided by disparate location-based service providers (e.g., Home Subscriber Service (HSS), Presence Server, CSCF, and Location Based Server (LBS) servers) as recited in claim 1. *See* Requena, ¶¶ 0211-14, 0036.

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<sup>2</sup> Although Requena uses the term “resister” in this context (Requena, ¶ 0209), we presume that this is a typographical error, and that the term was intended to be “register.”

As for the preambular limitation to the disparate location-based service providers specifying different formats for receiving the requests, Requena teaches or suggests a request's structure (e.g., message can be request (Requena, ¶ 0075)), such as the message's body, can have a specific format. *See Requena, ¶¶ 0082-86.* Specifically, Requena discusses using a Session Initiation Protocol (SIP) that specifically formats the message's body into Session Description Protocol (SDP) or text format. *See id.* Requena thus suggests that each service provider may have different specific formats to format the message's body.

For example, one service provider can format its messages' bodies in a SDP format, while another service provider can formats its messages' bodies in a text format. *See Requena, ¶ 0086.* As another example, Figure 3 shows a REGISTER request that is applicable to the Figure 10 embodiment in a SDP format (Requena, ¶¶ 0044, 0083-84; Figs. 3, 10), and Figure 4 shows an INVITE request that is also applicable to the Figure 10 embodiment in XML format (Requena, ¶¶ 0045, 0083-84; Figs. 4, 10). Armed with these teachings, an ordinarily skilled artisan would have recognized that Requena's system possesses or is capable of yielding different providers specifying different formats (e.g., one with a SDP format and another with text format) with the predictable result of having disparate location-based service providers specifying different formats for receiving request as recited in claim 1. *See KSR Int'l Co., v. Teleflex Inc.*, 550 U.S. 398, 416 (2007).

Requena also teaches receiving a request (e.g., a message) for the location-based services as recited in claim 1, when the user requests a service suited to the user's actual location. *See Requena, ¶ 0209.*

Additionally, Requena discloses various steps taken to obtain a service suited to the user's actual location or a location-based service that determines from a request a location-based service provider which can service the request. *See* Requena, ¶¶ 0204-15; Fig. 9. As part of this process, Requena discloses different requests, including the CSCF receiving a service request and checking user information in the HSS or Presence Server. *See* Requena, ¶¶ 0210-11. As this received message at the CSCF is a request for service or is used to obtain a location-based service (*see id.*), Requena discloses a request used to check whether certain information (i.e., a location) is stored in the HSS or Presence Server. *See id.* Based on this checking, Requena's CSCF further queries a LBS server (e.g., a location-based service provider) for information. *See* Requena, ¶¶ 0213-14. Thus, from this service request, Requena ultimately determines a location-based service provider (e.g., LBS server) that can service the request. We therefore find that Requena teaches determining from each location-based service request at least one particular location-based service provider which can service a request as recited in claim 1.

As stated above and regarding the "specifically formatting each request according to a specific format specified by said particular location-based service provider" step, Requena states a message's body using SIP can contain data, such as a session description following a specific format (e.g., SDP or text scripts). *See* Requena, ¶¶ 0074-75, 0082-86. Thus, Requena teaches part of each request is specifically formatted according to a specific format. For example, Figure 3 shows a REGISTER request that is applicable to the Figure 10 embodiment in a SDP format (Requena, ¶¶ 0044, 0083-84; Figs. 3, 10), and Figure 4 shows an INVITE request that is also

applicable to the Figure 10 embodiment in XML format (Requena, ¶¶ 0045, 0083-84; Figs. 4, 10). These teachings at least suggest that each device in Requena's system, including mobile terminals and service providers (e.g., CSCF or LBS server), must accept at least one of these formats to function properly. Additionally, Requena teaches the system uses SIP, including the CSCF in which the syntax of the messages uses either User Datagram Protocol (UDP) or Transmission Control Protocol (TCP). Requena, ¶¶ 0075, 0211. Requena thus at least suggests specifically formatting each request according to a specific format specified by the particular location-based service provider (e.g., SDP or text using UDP or TCP) as recited in claim 1.

Alternatively, Requena discloses a negotiation between two speakers (e.g., a user and a third party). Requena, ¶ 0107. Once the user registers a location, the user indicates a data format. *Id.* If the third party requests that information, the third party will be notified about the format. *Id.* Requena teaches and suggests in this embodiment receiving a request for location-based services (e.g., a request for a user's information), determining from the request a particular service provider (e.g., a user) which can service the request, and specifically formatting the request according to a format specified by the provider's (e.g., the user's data format). *See id.* Requena therefore teaches yet another service provider (e.g., a user's device) that has a specific format and suggests that different providers (e.g., different users) have different formats. Otherwise, there would be no need to notify the third party about the information's format. *See id.*

Furthermore, Requena teaches uniformly formatting each result set produced from a request. Requena explains that all messages, including responses (*see* Requena, ¶ 0075), are coded and decoded using a standard coding mechanism, such as a XML or Geography Markup Language (GML). Requena, ¶¶ 0118-20. Accordingly, Requena's response to the request (i.e., a result set) will be formatted using a standard or uniformly formatted (e.g., a GML response). Moreover, claim 1 includes the open-ended transitional phrase, "comprising," that does not exclude additional, unrecited steps. *See Mars Inc. v. H.J. Heinz Co.*, 377 F.3d 1369, 1376 (Fed. Cir. 2004). Requena can thus both specifically and uniformly format messages (e.g., request and responses) and still meet the limitations of claim 1. For example, Requena specifically formats the request's body with SDP or text and then codes or uniformly formats the same request with GML that is sent to the service providers. When the service provider provides the result set (e.g. the response), Requena will again uniformly format the set produced from the request. Requena therefore teaches "uniformly formatting each result set produced from" the requests as recited in claim 1.

Lee further illustrates a specific technique for uniformly formatted responses (i.e., result sets) that was known in the art at the time of the invention. Lee specifically teaches using XML as a standard to describe web-based documents in a Geographic Information System (GIS) having a GML specification. Lee, at 1936-37. Lee uses a XML data provider as an interface to standardize the documents from heterogeneous data sources (Lee, at 1936-37; Fig. 1), such as Requena suggests (*see* Requena, ¶¶ 0118-120). Thus, combining Lee's teachings with Requena would have been

obvious to an ordinarily skilled artisan since the combination predictably yields no more than uniformly formatting a result set in a specific manner. *See KSR*, 550 U.S. at 416.

*Claim 2*

Requena discloses and teaches that the uniformly formatted result sets (e.g., responses) have been formatted according to GML. *See* Requena, ¶ 0120.

*Claim 3*

As discussed above, Requena discloses a location-based service adapter interface or a Universal Mobile Telecommunications System (UMTS) that requests a service based on the user's actual location. *See* Requena, ¶¶ 0208-15. Additionally, Requena teaches a message coding mechanism or interface that codes and decodes all messages using a standard, such as GML or XML. Requena, ¶¶ 0118-20. Requena therefore discloses a uniform input interface (e.g., coding mechanism) through which location-based services can be requested using a uniform format independent of a specific format required by a particular service adapter.

Additionally, Lee teaches a XML data provider acts as an interface to standardize or format uniformly messages in a GIS environment. *See* Lee, at 1936-37. Substituting Lee's uniform input interface (*see id.*) for Requena's uniform coding mechanism (Requena, ¶¶ 0118-20) yields nothing more than a predictable result of providing Requena's coding scheme with an uniform input interface adapted to be connected to different service adapters

specifying different formats for receiving inputs as recited in claim 3. *See KSR*, 550 U.S. at 416. This interface improves upon Requena's coding scheme and provides a rationale for combining Lee with Requena.

Moreover, as noted above, Requena at least suggests a uniform output interface (e.g., HSS, Presence Server, or LBS server output interface) having the requested information, through which specifically formatted result sets (e.g., responses that include message's structure having a body with a specific format, such as SDP or text (*see Requena, ¶¶ 0082-86, 0075*)), are also uniformly formatted into GML (*see Requena, ¶¶ 0118-120, 0075*). Additionally, we previously discussed Requena teaches an embodiment where the user, that has the information requested by a third party, registers and has its own data format. *See Requena, ¶ 0107*. Requena therefore teaches yet another uniform output interface (e.g., coding mechanism for the user) through which the user's specifically formatted result sets (e.g., in the user's data format) can be formatted using a uniform format.

Requena also teaches and suggests the uniform input interface (e.g., coding mechanism) is adapted to be connected to different service adapters (e.g., LBS servers) through the CSCF. *See Requena, ¶¶ 0036, 0213-14*. That is, Requena teaches a uniform input interface (e.g., the coding mechanism) that uniformly formats requests separate from the service providers or adapters specifying different formats for receiving inputs (e.g., SDP and text (*see Requena, ¶¶ 0082-86*)). We refer to our previous discussion of claim 1 for the details relating to the different service adapters specifying different formats for receiving inputs. Finally, the phrase, “adapted to” is a functional limitation and only requires Requena possess the ability of connecting to different service adapters specifying different

formats. The above analysis of claim 1 demonstrate the uniform input interface's ability to be connected to different service adapters specifying different formats for receiving inputs.

*Claims 5 and 6*

Requena teaches and suggests a machine readable storage (e.g., the Central servers, Messaging servers, and Presence servers can be combined and collectively perform the functions described by Figure 9 (*see* Requena, ¶¶ 0042, 0061-66, 0208-215)) having stored a computer program for processing request, including receiving the request, determining the service provider to service the request, specifically format the request, uniformly format the results, and forwarding the results. Requena, ¶¶ 0195, 0211-214. Regarding the remaining limitations in claims 5 and 6, they are commensurate in scope with claims 1 and 2 respectively. The above discussion of claims 1 and 2 therefore applies to the remaining recitations.

*Purported Errors in the Obviousness Rejection*

Appellants argue that we allegedly misapprehended the claimed invention. Request 8, 11. Specifically, Appellants contend that the claim requires (1) specifically formatting each request according to the format specified by the particular location-based provider, and (2) uniformly formatting each result set produced from the disparate location-based server providers. Request 8-11. We address each of these limitations in the above rejection and did not ignore the distinction between specifically formatting a *request* and uniformly formatting a *result set*.

As stated above, Requena teaches the request's (e.g., message's) structure includes formatting the message with a specific format, including SDP, text, or XML script. Requena, ¶ 0086. For example, Requena states that the message's body can be in a SDP or text format. *See* Requena, ¶¶ 0086, 0130. Since both SDP and text are specific formats as explained above, Requena thus suggests that at least portions of a message (e.g., message's body) can be formatted according to a specific—not uniform—format specified by a particular location-based service providers (e.g., HSS, Presence Server, and LBS server). Additionally, as discussed above in the rejection, Requena illustrates yet another example where a user, which has a specific data format, services requests or is a location-based service provider that specifies a specific data format. *See* Requena, ¶ 0107. Requena therefore at least suggests specifically formatting a request according to a format specified by the location-based service provider.

Requena additionally teaches that a message coding mechanism that formats all messages, including responses (*see* Requena, ¶ 0075), uses a uniform format language, such as GML. *See* Requena, ¶¶ 0118-20. Given its broadest reasonable construction, a response to a request is also a “result set.” *See In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004) (internal citations omitted). Requena thus further teaches uniformly formatting a result set (e.g., a response). While we agree with Appellants that Requena teaches a single coding mechanism (Request 8-9), Requena teaches more than this single coding mechanism. Notably, Requena teaches and suggests *both* (1) specifically formatting each request according to a specific format specified by the service provider (e.g., message's body is in a

SDP format), and (2) uniformly formatting (e.g., with GML) each result set (e.g., response) produced from the request as recited in claim 1. *See* the above rejection for more details.

Contrary to Appellants' assertions (Request 10 referring to Reply Br. 6), we additionally noted in the rejection that the preamble in claim 1 is not limiting because it merely states the invention's purpose or intended use. *See Catalina*, 289 F.3d at 808. That is, the recitation to "a particular location-based service provider" in the claim's body is structurally complete without the preamble's recitation to the "disparate location-based server providers specifying different formats." *See Am. Medical Systems*, 618 F.3d at 1358-59. Thus, at best, the recitation of processing the requests for services provided by "disparate location-based service providers specifying different formats for receiving said requests" in claim 1 is an intended use limitation. *See Schreiber*, 128 F.3d at 1478. Yet, as stated above, Requena at least suggests that the request from a location-based service provider includes specifically formatting information (e.g., message's body is in a SDP or text format), and thus actually suggests different providers specifying different formats (e.g., one provider formats the message's body in SDP, and another provider formats the message's body in a text format).

Regarding claim 3, Appellants contend that the discussion about "intended use" is inapplicable. Request 10. We agree that claim 3 does not include a preamble commensurate in scope to claim 1. Nonetheless, claim 3 does recite functional language (i.e., "said uniform input interface *adapted to be connected to different service adapters specifying different formats for receiving inputs*"") (emphasis added). Such functional recitations cover any and all structure capable of performing the recited limitations. *See In re*

*Swinehart*, 439 F.2d 210, 213 (CCPA 1971). As stated above, Requena teaches a uniform input interface that includes the coding mechanism adapted to be connected or capable of being connected to service adapters (e.g., coding mechanism described in Requena, ¶¶ 0118-120) which specify formats (e.g., SDP or text). Also, contrary to Appellants' contentions (Request 10), we addressed the disputed limitations of claim 3, including an interface that is adapted to be connected to different service adapters specifying different formats for receiving inputs in the above rejection.

Finally, Appellants contend that we failed to address Appellants' arguments on page nine, line five through page ten, line twenty-one of the Appeal Brief. Request 11-12. We find that some of this discussion is rendered moot because the § 103 rejection relies on Requena—not Lee—to meet the limitations of specifically formatting the request and uniformly formatting the result set. Although Lee is cumulative (*see* above discussion under the New Grounds section), Lee nonetheless further illustrates that an ordinarily skilled artisan would have recognized uniformly formatting result sets as claimed.

For the foregoing reasons, Appellants have not persuaded us of error in our decision.

#### *Errors in the Examiner's Obviousness Rejection*

Although not argued by Appellants, upon reconsideration, we find error in the Examiner's § 103 rejection of claim 4 based on Requena and Lee. Claim 4 recites location-based service adapter objects, a location service object, and location request objects. The Examiner cites to Sections III.A and III.B of Lee to teach these recited elements, but fails to map the

disclosed objects to the recited objects. *See* Ans. 6. Lee teaches the XML Data Provider functionality is implemented using a OLE DB mechanism that creates OLE DB objects, including a Data Source object that performs a connection function for XML files, a Session object that provides information on GIS metadata, a Command object that manages command texts delivered from the GIS application program and other parameters, and a Rowset object that acquires geographical-related data, SRS-related data, and other attribute data from a connected XML document and lets the GIS application program access the data. *See* Lee, at 1937-38.

However, claim 4 recites a location service object configured to provide a reference to a location-based service adapter object *based upon* a specific location-based service. The Data Source object, the Session object, the Command object, and the Rowset object are not taught to be objects that provide references to a location-based service adapter object, which provide a service responsive to uniformly-formatted request, based upon specified location-based services. Also, while Lee discloses a Command object that manages parameters delivered from the GIS application program, Lee does not teach location request objects configured to define location-based-service request parameters required by generic ones of the location-based service adapter objects. Requena also fails to cure these deficiencies. *See generally* Requena. Combining Lee's teaching with Requena would not have therefore predictably yield (a) a location service object configured to provide a reference to a location-based service adapter object based upon a specified location-based service, or (b) location request objects configured to

define location-based-service request parameters required by generic ones of the location-based service adapter objects as recited in claim 4. *See KSR*, 550 U.S. at 416.

For the above reasons, we will not sustain the rejection of dependent claim 4.

*Additional Comments Regarding the New Ground of Rejection*

Appellants argue that according to *Ex parte Frye*, 94 USPQ2d 1072 (BPAI 2010) (precedential) the Board must limit its review to the Examiner’s findings and conclusions to avoid presenting a new ground of rejection. Request 2. Specifically, Appellants argue that the “Board did not limit its Decision to case law presented by the Examiner and the findings and conclusions made by the Examiner.” Request 3. For these reasons, Appellants also assert the rejection must be designated as a new ground of rejection. Request 3, 12. We take exception to these statements.

First, *Frye* does not state that the Board is limited to the *case law* the Examiner presented. *See generally Frye*, 94 USPQ2d 1072. Second, while *Frye* does state that the Examiner’s challenged findings and conclusions are reviewed anew, *see Frye*, 94 USPQ2d at 1075, nothing in this decision requires us to confine our factual findings to those found by the Examiner to avoid presenting a new ground of rejection. In fact, it is well settled that the Board can present additional facts without designating a new ground of rejection. *See In re Meinhardt*, 392 F.2d 273, 280 (CCPA 1968) (noting that the Board’s reliance on a portion of a reference ignored by the Examiner was not a new ground of rejection); *see also In re Kronig*, 539 F.2d 1300, 1302-03 (CCPA 1976) (finding that relying on the same teachings but fewer than

all the references in support of a § 103 rejection advanced by the Examiner and the Board does not constitute a new ground of rejection); *In re DBC*, 545 F.3d 1373, 1382 n.5 (Fed. Cir. 2008) (“[T]he example in the translation . . . merely elaborates upon, what is taught by the abstract.”) Thus, Appellants’ merely listing the additional facts presented by the Board (*see* Request 4-6) fails to demonstrate that our analysis is a new ground of rejection.

Appellants also assert that we shifted the statutory basis for the rejection in the Opinion. Request 6. We disagree. Despite the Examiner’s reliance on an admittedly cumulative prior art reference, the rejection discussed in our Opinion and above is still based on obviousness under § 103. Additionally, our analysis relies both on what Requena implicitly and explicitly teaches and suggests as a whole for various limitations. *See, e.g.*, Opinion 8 (“Requena *teaches* and *suggests* location-based service providers capable of specifying different formats.”); *see also id.* (“Requena also states all messages are also coded and decoded using a coding mechanism . . . *a teaching that at least suggests* uniform formatting.”) (emphases added). Nevertheless, our recognizing that Requena happens to teach and suggest all recited limitations (*see* Opinion 8) despite the Examiner’s reliance on Lee hardly transforms the rejection to different statutory basis (i.e., an anticipation rejection) as Appellants seem to suggest. On the contrary, the rejection is still based upon obviousness. *See In re Meyer*, 599 F.2d 1026, 1031 (CCPA 1979) (noting that obviousness rejections can be based on references that happen to anticipate the claimed subject matter). Although the rejection mainly relies on Requena to teach both specifically formatting

the message and uniformly formatting the result set, we nevertheless indicated in the Opinion and above that Lee further demonstrates uniformly formatting responses to requests (i.e., result sets). *See* Opinion 8, 10.

We have considered the arguments raised by Appellants in the Request. We are persuaded that, based on the totality of circumstances and to the extent that the analysis in the Opinion does not purportedly track the thrust of the Examiner's rejection, the rejection of claims 1-3, 5, and 6 based on Requena and Lee is considered a new ground of rejection.

We have therefore granted the Request and supplant our Opinion with a new ground of rejection for claims 1-3, 5, and 6 under § 103. We additionally reverse the § 103 rejection of claim 4.

This decision contains new grounds of rejection pursuant to 37 C.F.R. § 41.50(b). This section provides that “[a] new ground of rejection... shall not be considered final for judicial review.”

Section 41.50(b) also provides that the Appellants, **WITHIN TWO MONTHS FROM THE DATE OF THE DECISION**, must exercise one of the following two options with respect to the new ground of rejection to avoid termination of the appeal as to the rejected claims:

- (1) Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .
- (2) Request that the proceeding be reheard under § 41.52 by the Board upon the same record. . . .

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Application 10/077,012

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

**REHEARING GRANTED; 37 C.F.R. § 41.50(b)**

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CAREY, RODRIGUEZ, GREENBERG & PAUL, LLP  
STEVEN M. GREENBERG  
950 PENINSULA CORPORATE CIRCLE  
SUITE 2022  
BOCA RATON, FL 33487